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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,786	03/13/2001	Ronald Samuel Blackhurst	3522 P 003	2836
26967	7590	12/19/2003	EXAMINER	
BRENT A. HAWKINS 311 S. WACKER DRIVE 53RD FLOOR CHICAGO, IL 60606-6622			SORKIN, DAVID L.	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b>		<b>Applicant(s)</b>	
	09/805,786		BLACKHURST, RONALD SAMUE	
	<b>Examiner</b>		<b>Art Unit</b>	
	David L. Sorkin		1723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 19 November 2003.

2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1,2,4 and 6 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1,2,4 and 6 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
     a) ☐ The translation of the foreign language provisional application has been received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 November 2003 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson (US 4,294,548). Regarding claim 1, Watson ('548) discloses a barrel mixer comprising a rotary mixer barrel (25), a support for the rotary mixer barrel, the support comprising a tipping arrangement for the rotary mixer barrel between a mixing position in which the rotary mixer barrel is angled so as to retain its contents and a tipping position in which the rotary mixer barrel is angled so that its contents are poured out, the support further comprising wheel (26) disposed proximate a bottom portion of the support; a motor (1) having an output shaft (8) aligned perpendicular to an axis of rotation of the rotary mixer barrel; a mounting plate abutting the motor and

Art Unit: 1723

surrounding the motor output shaft (see Fig. 2, between the motor (1) and pulley (16)); and a transmission (6,7,9,11,12,13,14,15,16,17,18) mounted on the support for rotating the rotary barrel, the transmission including step-down gearing between the motor and the rotary mixer barrel, the motor and gearing tipping with the rotary mixer barrel when the support is moved between the mixing position and the pouring position, wherein the motor and transmission are disposed substantially behind the wheel such that the motor and transmission are disposed on the same side of the support; wherein the support comprises a resting surface (30) extending in a direction opposite of the rotary mixer barrel and behind the wheels such that when the mixer is in the mixing position the mixer rests upon the resting surface and a foot (29) extends beyond the wheel of the mixer such that when the mixer is in the pouring position the mixer rests upon the foot (see col. 2, lines 55-59). Watson ('548) discloses a wheel (26), rather than "wheels" as claimed. However, it is considered that it would have been obvious to one of ordinary skill in the art to have used an additional wheel, for example for additional support. See *St. Regis Paper Co. v. Bemis. Co., Inc.*, 193 USPQ 8, 11 (7<sup>th</sup> Cir. 1977) and *In re Harza*, 124 USPQ 378 (CCPA 1960) regarding the obviousness of duplicating parts.

Regarding claim 4, the motor is an electric motor (see col. 1, lines 62-64). Regarding claim 6, Watson ('548) does not explicitly discuss disassembly of the apparatus; however, it has been held that making parts separable is obvious (*In re Dulberg*, 129 USPQ 348).

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watson (US 4,294,548) in view of Halsted (US 5,492,401). The motor of Watson ('548)

discussed above with regard to claim 1 is not an internal combustion motor. However, it is considered that it would have been obvious to one of ordinary skill in the art to have replaced the motor of Watson ('548) with an internal combustion motor because Halsted ('401) teaches that electric and internal combustion motors are alternative means for powering rotary barrel mixers (see col. 6, lines 12-17).

#### ***Response to Arguments***

5. Applicant's arguments filed 19 November 2003 have been fully considered but they are not persuasive. The drawings of Watson (US 4,294,548), particularly Fig. 2, clearly and unambiguously depict "a mounting plate abutting the motor and surrounding the motor output shaft" as claimed. The plate is between motor (1) and pulley (16).

#### ***Conclusion***

6. This is a RCE of applicant's earlier Application No. 09/805,786. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Application/Control Number: 09/805,786

Page 5

Art Unit: 1723

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

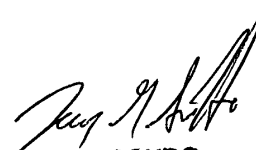
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

  
**TONY G. SOOHOO**  
**PRIMARY EXAMINER**